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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. [redacted]

LESLIE J. WEISS,
PETITIONER,

v.

THEODORE R. PATRICK, JR., ALIAS JOHN DOE and ALBERT TURNER, ALIAS RICHARD ROE,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Petitioner, Leslie J. Weiss, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on November 29, 1978.

Opinion Below

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The opinion of the United States District Court for the District of Rhode Island, also not yet reported, appears in the Appendix hereto.

Jurisdiction

The judgment of the Court of Appeals for the First Circuit was entered on November 29, 1978. This petition for certiorari was timely filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether the finding of "ultimate fact" of the lower court was incorrect.
2. Whether the petitioner can present a successful claim under 42 U.S.C. § 1985(3).

Statutory Provision Involved

United States Code, Title 42:

§ 1985(3)

"Depriving Persons of Rights or Privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any

lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one of more of the conspirators."

Statement of the Case

Ms. Leslie Weiss was a native of Massachusetts and resided there for most of her life. In June of 1974, she became a member of The Unification Church. As a consequence of such membership, she left the Massachusetts area and traveled on various fund-raising teams. While in Columbus, Ohio, on such a fund-raising team she received word from her mother that she was ill and desired to see her. Thus, Ms. Weiss informed her church superiors and in late November, 1974, departed from the Columbus, Ohio region to travel to Boston, Massachusetts. Upon her arrival in Boston, Ms. Weiss was met by her mother and taken to her apartment. Later that day Mrs. Weiss (mother of Leslie) mentioned that they had been invited to the Chacrans for Thanksgiving dinner and that a Mr. Dixon would be their escort. Mr. Dixon was none other than defendant Albert Turner. However, his true identity was unknown to Ms. Weiss in that she had never before made his acquaintance. Mr. Dixon transported them from the State of Massachu-

setts to Warwick, Rhode Island and specifically to the residence of defendant, Albert Turner.

Ms. Weiss freely entered the Turner residence and was led to the basement. It must be remembered that at this point in time she was totally unaware of the true purpose of the journey. Also present were Mr. and Mrs. Albert Turner, their daughter Shelly (former Unification Church member) various other Turner family relations and Mrs. Weiss. After all of the aforesaid had been seated, there suddenly appeared defendant, Theodore Patrick.

Mr. Patrick indicated that he had flown all the way from his California home to be with Ms. Weiss. He asserted that her Unification Church activities were a form of Satanic prayer and that she was trapped and deceived. It was his mission to exculpate her from her imprisonment and have her renounce all loyalty and affiliation to the Unification Church. He was willing to remain until he accomplished this goal.

Ms. Weiss was detained in the basement for approximately four hours as defendants tried to impose their views upon her. During this period she neither observed, nor was aware of any other exits other than the stairwell leading to the first floor. Thereafter, she was taken to the dining room, located on the first floor, where Thanksgiving dinner was served.

Ms. Weiss spent the night of November 28, 1974 in the Turner residence. She slept in a room wherein there were three beds. She was positioned between two other people. The following morning, Ms. Weiss was successful in escaping from her captors by leaping out of a window situated eight to ten feet above the ground. This did not happen, however, until all of the occupants of the bedroom had awakened and had proceeded to another section of the house. Mrs. Albert Turner became "almost hysterical" upon learning that Ms. Weiss had escaped.

Once Ms. Weiss had liberated herself from the Turner home, she endeavored to seek assistance. She was unsuccessful and within a short period of time, Mrs. Albert Turner and Shelly Turner had located her whereabouts.

Shortly thereafter, the police arrived and Ms. Weiss was placed in a Warwick Police Department automobile. They transported Ms. Weiss back to the Turner residence. She emphatically expressed her unwillingness to reenter the Turner home. Consequently, she was transported to Butler Hospital, where she was voluntarily admitted so, to flee her captors. There she remainded for four (4) days.

Leslie Weiss instituted this lawsuit on July 22, 1975, alleging in her complaint that (1) plaintiff was falsely imprisoned by the defendants; (2) the defendants committed assault and battery on the plaintiff; (3) the defendants violated plaintiff's rights as in 42 U.S.C. §1985(3); and (4) the defendants willfully and maliciously inflicted severe emotional distress on the palintiff. Federal question jurisdiction was alleged under 28 U.S.C. §1332 and §1343(i). The plaintiff sought monetary damages.

The United States District Court for the District of Rhode Island rendered a judgment for the defendants. By a per curiam decision, the Court of Appeals for the First Circuit affirmed the opinion of the District Court, without reaching the issue of the applicability of 42 U.S.C. §1985(3).

Reasons for Granting the Writ

I. The Findings of Ultimate Fact by the Court Below Are Incorrect.

It is a generally accepted rule of law that the standard of review for an appellate court of a trial court's findings of fact is that the trial court must be "clearly erroneous"

before a reversal shall occur. See Federal Rules of Civil Procedure, Rule 52(a). It has been stated as follows:

> "That the concurrent findings of two lower courts are persuasive proof in support of their judgment is a rule of wisdom in judicial administration. In reaffirming its importance we mean to pay more than lip service. But the rule does not relieve us of the task of examining the foundation for findings in a particular case." *Baungartner* v. *United States,* 322 U.S. at 670 (1943).

In that decision, this Honorable Court further differentiated between "subsidiary facts" and "ultimate facts". Finding a subsidiary fact forces the trier of fact to decide on evidentiary facts; finding an ultimate fact, on the other hand, "may involve the very basis on which judgment of fallible evidence is to be made." *Baungartner,* 322 U.S. at 671. This distinction is not limited to issues of naturalization. Among other areas, it has arisen in ultimate findings of racial discrimination. See *Wade* v. *Mississippi Co-Operative Extension Service,* 528 F.2d 508 (5th Cir. 1976).

This petitioner believes that the Court below made incorrect findings of ultimate fact and should be reversed. The fact situation, undenied by either party, is that of an attempt at "deprogramming" the petitioner, a member of The Unification Church. The issue of deprogramming such Church members by their parents and agents have been controversial and the cause of much litigation. See, e.g., *Katz* v. *Superior Court,* 73 Cal. App. 3rd 952, 141 Cal. Rptr. 234 (1977).

In the coercive atmosphere that characterizes deprogramming, reasonable people might act exceedingly different. Some might attempt all forms of escape and employ necessary violent means to secure this end; others might feign

deprogramming and await the earliest opportunity to be liberated. In the instant case, the petitioner pretended to be deprogrammed and "played along" with her deprogrammers' desires. She testified that she genuinely feared for her own safety. However, at the first opportune time she escaped, only to be recaptured. It is the petitioner's contention that one may temporarily feign acquiescence in the contrary beliefs of others and that such an action is not a relinquishment of one's individuality. Such an encroachment upon one's personal freedom, when employed in a restrictive environment, is a form of imprisonment (ultimate facts) and is not to be condoned merely because one does not strenuously and continuously object to listening. The subsidiary fact of whether one willingly listens must be analyzed from the perspective of the surrounding environment.

Individuality is in jeopardy. Petitioner, as an individual, did not desire to heed the words of those present in the Turner basement. This is evident from her own testimony, and uncontradicted by defendants, when Miss Turner, daughter of defendant, Albert Turner, recollects the moment as follows:

> "Okay. From what I remember, she stated that she didn't want to listen anymore. She got up, she walked over to the doorway, and my father was there. She bolted—well, then she got up, she bolted up, she ran into my father . . ." (brief of appellees, in the U.S. Court of Appeals for the First Circuit at Pages 11 and 12).

She had exercised her innate right to be independent of the thoughts, ideals, and aspirations of others. Is not this very accomplishment an unwillingness to remain? Or is unwillingness only evidenced when one clearly displays the

same through an effectuation of screams, kicking and other body gestures that connotes clear disagreement. Petitioner believes her actions are self-evident. Petitioner, Ms. Weiss, believes that the circumstances shriek for a vindication and the granting of a Writ of Certiorari should be issued.

II. Petitioner Has a Valid Cause of Action Under 42 U.S.C. §1985(3), Even Though the Trial Court Did Not Address Itself to This Issue.

In her second amended complaint, petitioner made the requisite allegations to come under a 42 U.S.C. §1985(3) cause of action. The Trial Court never reached the petitioner's claim under 42 U.S.C. §1985(3) because it felt that the appellant (petitioner) was free to leave. It is the petitioner's opinion that this issue should have been confronted in that petitioner never had such freedom of choice.

The landmark decision in the analysis of the aforementioned statutory section is *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971) where this Honorable Court wrote:

> "To come within the legislation, a complaint must allege that the defendants did (1) conspire to go in disguise on the highway or on the premises of another; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) did, or cause to be done any act in the furtherance of the object of the conspiracy, whereby another was (4a) injured in his person or property or (4b) deprived of having and exercising any right or privilege of a citizen of the United States." 403 U.S. 88, 102-03 (1971).

Ms. Weiss was clearly desirous of departing when she uttered her unwillingness to listen and "bolted up" from her chair. Miss Turner substantiates this fact (See page 12 of Appellees' brief to the U.S. Court of Appeals for the First Circuit). It was at this point in time that she, in the words of the *Griffin* case, became deprived of having and exercising a right (right not to listen and to freely exercise her own religious beliefs) which was granted to her as a citizen of the United States. The popularity or sensibility of one's religious beliefs should not be a factor in deciding the applicability of 42 U.S.C. §1985(3). See *United States* v. *Ballard*, 322 U.S. 78 (1943); *United States* v. *Seeger*, 380 U.S. 163 (1965). The very idea of being unwillingly subjected to a deprogramming encounter is an unwarranted interference and trespass upon one's personal beliefs. As such it is an injurious encroachment on personal liberty.

> "In order to avoid the 'constitutional shoals that would lie in the path of interpreting §1985(3) as a general federal tort law', the Supreme Court gave a limited construction to the statutory language requiring intent to deprive of equal protection, or equal privileges and immunities. 'Such language means that there must be some racial, or otherwise class-based invidiously discriminatory animus behind the conspirators' actions." *Griffin*, 403 U.S. at 102.

The second element enumerated in the *Griffin* decision must now be addressed. Petitioner is of the firm conviction that this element was proven. In order to avoid the constitutional shoals that would lie in the path of interpreting §1985(3) as a general tort law, this Honorable Court gave a limited construction to the statutory language requiring intent to deprive one of equal protection, or equal privileges and immunities. Such language means that there must be

some racial, or otherwise class-based invidiously discriminatory animus behind the conspirators' actions. See *Griffin*, 403 U.S. at 102. Racial discrimination is not a prerequisite for a 42 U.S.C. §1985(3) action. *Harrison* v. *Brooks*, 446 F.2d 404 (1st Cir. 1971); *Azar* v. *Connolly*, 456 F.2d 1382 (6th Cir. 1972).

The testimony of Mary Clare Baker and defendant, Theodore Patrick established the necessary class-based indivious discrimination. Mary Clare Baker (a witness for the plaintiff) testified that she is a member of The Unification Church. (Mary Clare Baker's testimony; Q. 85). While such a member, she was held captive at a motel and during the course of captivity, defendant Patrick was present. (Mary Clare Baker's testimony; Qs. 10-16). Further, defendant Patrick made a telephone call to defendant Turner from the very motel in which Mary Clare Baker was being restrained.

Defendant Theodore Patrick's testimony adds further credence to the aspect of class-based invidious discrimination. He asserts that it is his belief that every adult individual has the absolute right to associate or affiliate with the religious organization of his or her own choosing. (Theodore Patrick's testimony; Q. 46). However, when asked whether he believed that every adult individual that desired to become a member of The Unification Church should be able to do so, Patrick answered, "on advice of counsel, I assert my right under the Fifth Amendment to the United States Constitution, Article 1, Section 13 of the Rhode Island Constitution, to decline to answer that question on the grounds that the answer might tend to incriminate me." (Theodore Patrick's testimony; Answer to Q. 50).

The defendants were not motivated solely by the concern of a mother for the well-being of her daughter. The testimony of Mary Clare Baker divulges that defendants had previously tried to "deprogram" other members of the

same class, i.e., members of The Unification Church. (Mary Clare Baker's testimony; Qs. 11-19). Furthermore, defendant Patrick is renowned for his deprogramming activities and has even published a book in which he describes many experiences. See, e.g., *People* v. *Patrick*, No. 320779 (N.Y. Crim. Ct., Aug. 6, 1973). Defendant Turner has also played an active role in previous deprogramming endeavors of The Unification Church members. (See Mary Clare Baker's testimony heretofore enumerated as Qs. 53 - Q. 102). Further, defendant Turner's daughter, Shelly Turner, was once a member of The Unification Church and so remained until she was deprogrammed by defendant Theodore Patrick. (See Shelly Turner's testimony; Qs. 422-430). Consequently, one must logically infer that the defendants, when engaged in this type of deprogramming, had class-based animus toward members of The Unification Church. It is not the case of the defendants' working in conjunction with individual parents.

Sections (1) and (3), under the *Griffin* guidelines have both been proven. Under Section (3), it is obvious that both the defendants-respondents worked jointly to bring the petitioner to defendant Turner's house to "deprogram" her. The first element under *Griffin* exists in that it is undenied by either party that the defendants-respondents worked in unison to transport the petitioner from Massachusetts to the Rhode Island house of defendant Turner.

Ms. Weiss firmly believes in the aspirations and ideals promulgated by The Unification Church. As such, she should be legally protected from the coercive activities of others who seek to strip her beliefs through a deprogramming procedure. In this environment, 42 U.S.C. §1985(3) provides the type of protection needed.

Conclusion

For these reasons, a writ of certiorari should issue to review the judgment and the opinion of the First Circuit.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

C.A. No. 75-0223

LESLIE WEISS
v.
THEODORE PATRICK, JR., alias John Doe
v.
ALBERT TURNER, alias Richard Roe

OPINION

BOYLE, FRANCIS J., District Judge

This is an action for damages brought by Plaintiff, Leslie Weiss, against Defendants, Theodore Patrick, Jr., and Albert Turner, alleging a conspiracy under the provisions of 42 U.S.C. § 1985(3) together with pendant claims for damages for assault and battery and false imprisonment.

The Complaint was filed July 22, 1975. It alleges that Plaintiff is an active member in a religious organization, and is entitled to freely practice her religion but that Defendants conspired to deny Plaintiff equal protection of the law. Plaintiff alleges that Defendants actively prevented her, through force, violence and intimidation from enjoying equal rights, privileges and immunities. The alleged conspiracy involved her right of freedom of interstate movement, speech, religion, association, assembly, her right to be secure in her person and her right not to be enslaved nor deprived of life and liberty other than by due process of law. Additional counts allege confinement of Plaintiff without legal justification, interference with her personal liberty by means of unconsented bodily contacts, and resulting mental suffering. The Complaint seeks compensatory and punitive damages.

In June of 1974, Plaintiff became a member of the Unification Church, members of which are popularly known as "Moonies". At that time she was age 23. She is the daughter of a physician and a professor of anatomy and physiology; and has one brother. Both her mother and father deceased prior to the time of trial; the father in September, 1977, and the mother in February, 1976. Plaintiff's health has been marred by emotional problems. Her mother first recognized emotional difficulties when the Plaintiff was a seventh grade student, and, until June of 1974 she was frequently under treatment for psychological or psychiatric problems. Plaintiff has not been treated for her emotional problems since she became a member of the Unification Church.

Plaintiff is possessed of above-average intelligence and successfully pursued collegiate studies on two occasions which ended because of her emotional problems. Although there is no contention and no doubt that she is competent, she is an extremely troubled person.

Following her initial membership in the Unification Church, in June of 1974, she trained for a time in Boston, Massachusetts, and later at Tarrytown, New York. Thereafter, she joined a mobile fund raising team in Ohio, where she did "indemnity" by vending items for sale in various locations. Indemnity was defined as a process of life which all must pay in order to cure the separation between God and mankind.

Plaintiff's mother became ill with cancer and the Church authorities authorized Plaintiff to visit her mother at Thanksgiving in November of 1974. Plaintiff flew from Columbus, Ohio, to Boston, Massachusetts, on November 27, 1974, arriving in Boston in the early morning hours. She was met by her mother at the airport, and was driven to her mother's home where she slept for a time. Her mother told her of plans to have Thanksgiving dinner with

friends and told Plaintiff that she had a surprise in store for her. At approximately 2:00 P.M. on the same day, a Mr. Dixon arrived and drove Plaintiff and her mother to a nearby shopping center. Mr. Dixon was identified by Plaintiff at trial as the Defendant Turner. At the shopping center, Plaintiff met Shelly Turner, Mr. Turner's daughter, whom she had known as a member of the Unification Church.

Defendant Turner, Shelly Turner, Plaintiff's mother and Plaintiff traveled from Massachusetts to the Turner home in Warwick, Rhode Island, in an automobile operated by Defendant Turner. Plaintiff was met "warmly" at the Turner home by Defendant Turner's family, and was taken to a nicely furnished basement. When seated, Plaintiff was approached by a black man, later identified as Defendant Theodore Patrick, Jr., who stated:

> "My name is Black Lightning, and I have flown here all the way from my home in California just to talk to you this afternoon."

The basement area was described as an area 25 feet by 15 feet, modestly furnished, with one doorway. The occupants sat in a circle, which included Plaintiff, her mother, the Turner family and Black Lightning.

Plaintiff testified that Defendant Patrick told her she was out of her "right mind", that she had been deprived of her free will and was worshipping Satan, and that "they were going to take as long as it was necessary to force me to change my mind." Plaintiff testified that she sought to leave.

> "[I]t seemed to me that everybody in that room was on top of me restraining me from getting to that door[1] . . . . [S]everal people actually had their hands on me physically, but there was one tremendous force coming from Mr. Turner, and he grabbed me very harshly

[1] Photographs in evidence establish the existence of a doorway or archway, but not a door.

by the shoulders and slammed me violently into a chair, and pinned me there, and I was greatly hurt. My whole body was hurt, writhing with pain. I was shocked; I was frightened: I was angry at this restraint of my freedom, and he must have held me there for a few minutes, one or two minutes, but at the time it seemed like a very long time."

Plaintiff testified that she was then told by Mr. Patrick that he was there to "deprogram me". Plaintiff stated that she realized Defendants Turner and Patrick were prepared to use force to

"detain me against my will so I decided that it would be easier for me to go along and pretend that their deprogramming tactics were influencing me, and that I was gradually and gradually being deprogrammed."

Plaintiff further testified that she asked everyone to leave the basement area.

"[A]nd I talked to Mr. Turner and told him that I thought he was very concerned about me, that he was very courageous to be trying to rescue me, that I thought that he must be really concerned to be going to this great extent to get me free, and I was pretending to be deprogrammed and pretending to act that I trusted him."

(Later testimony makes it clear that Defendant Patrick, not Defendant Turner was then alone with Plaintiff).

Plaintiff testified that there came a time when she acted as if she were in agreement with the deprogramming process.

"I told him that I considered him to be concerned, and courageous, and I thanked him for liberating me from my illusions."

She testified that she made no further indication that she wished to leave. The basement discussion continued for approximately four (4) hours. Then Plaintiff with her

mother, Defendant Patrick, Defendant Turner and his family and a number of relatives of the Turner family sat down to a two (2) hour Thanksgiving dinner in an upstairs dining room. Thereafter, Plaintiff took a nap on the living room sofa. Plaintiff then retired to a bedroom which was also occupied by her mother and Shelly Turner. Plaintiff described the room as having one window, where Shelly Turner's bed was located, and one doorway, across which her mother's bed was later placed, and Plaintiff testified she assisted in moving her mother's bed. Plaintiff testified:

"I thought I better had give help. I thought I better comply with anything they asked me to do."

Plaintiff testified that about 5:00 o'clock on the following morning she attempted to leave by moving her mother's bed, but woke her up and was unable to move the bed. Plaintiff arose with the other occupants of the household between six and seven in the morning. At this time, both Defendant Patrick and Defendant Turner had left the Turner home. Plaintiff testified that later on she was allowed to roam about the house. She stated:

"I had been trying ever since I talked to Ted Patrick in the basement to convince Ted Patrick and my mother and Mr. Turner and Mrs. Turner and Shelly Turner, that I was agreeing with everything that they said, and that I was being deprogrammed. I was being dissuaded of my religious beliefs. I was coming to my senses, and I became a great actress and, so they gradually relaxed their controls on me the more they became convinced that I was being deprogrammed."

Plaintiff exited the Turner house later that morning through a bedroom window, jumping eight (8) to ten (10) feet to the ground. Plaintiff went first to a nearby home, then to a nursing home, one block away. There she at-

tempted to call members of the Unification Church when her mother "caught up with her" in a telephone booth. She ran to a medical building nearby. The police were called and Plaintiff was taken back to the Turner home, and upon her refusal to enter, she was taken to Butler Hospital in a police car. At the hospital, Plaintiff testified that she

> "pretended that I had what deprogrammers call a relapse or a floating experience where they momentarily flip back into their old beliefs and try to make an attempt at their freedom. I acted as if I had such a relapse and then pretended that I was now coming back into my deprogrammed state, saying that I wanted to be helped; that I wanted to get my mind straightened out, and I was sorry."

Plaintiff remained at Butler Hospital for four (4) days and was allowed to leave when she asked to leave. At the hospital, she testified she had migraine headaches, nausea and gastrointestinal upsets, and that the upsets continued after she left the hospital.[2] She further testified, "Sometimes I still fear traveling alone." She testified that this fear of traveling alone restricted her relationship with her mother as she was "forced to choose between my relationship with my mother and my own freedom."

Shelly Turner's testimony concerning the basement episode was somewhat different from Plaintiff's version. She stated that Plaintiff said she wanted to leave.

> "She bolted up, she ran into my father. My father [Defendant Turner] asked her to please sit down. My mother [Mrs. Turner] came over and said something like 'Janie [Leslie], please sit down. And then her mother [Mrs. Weiss] had said something. I don't remember exactly what. I said something to Leslie. She went over, very calmly, and sat down again."

She also testified that there were two windows in the bedroom where Plaintiff and Plaintiff's mother slept, and that Plaintiff's mother's bed was not placed across the doorway.

[2] Although the hospital record at Butler Hospital was introduced as an exhibt for identification, neither Plaintiff nor Defendants moved its admission as a full exhibit.

The credible evidence is, and the Court finds the facts to be as follows: Plaintiff willingly accompanied her mother to the Turner home for Thanksgiving dinner, where she met and talked with Defendant Patrick who had been hired and paid by Plaintiff's mother to convince Plaintiff to change her way of life. Plaintiff willingly listened, enjoyed dinner, napped, slept fitfully and, thereafter, determined to exit dramatically. Defendants and Mrs. Weiss indeed intended to change Plaintiff's mind by their actions, but the Court finds no credible evidence of improper action.

There are a number of reasons why Plaintiff's version of the facts which allegedly transpired at Defendant Turner's home is not credible. To begin with, her mother, who was terminally ill, was present as were a number of other persons when the supposed incident occurred. Although Plaintiff's mother's deposition was taken when she was known to be terminally ill, and was introduced as evidence, she was not asked to either corroborate or deny Plaintiff's account of what occurred at the Turner home.

In spite of the traumatic and vivid description of the events provided by Plaintiff, she suffered no treatable or apparent physical injury. The facts that she ate well, napped, and moved about at will prior to her "escape" are distinctly contrary to a claim of traumatic infliction of psychic injury.

Plaintiff alleges physical and emotional disturbance as a result of her experience. The Court finds, however, that there is no credible evidence of such injury. Plaintiff

has not proved that the state of Plaintiff's emotional health changed in any manner as a result of her alleged confinement. Indeed, she testified that she had not been treated for her emotional problems since she joined the Unification Church either before or after the alleged "kidnapping". Other than her own assertions and those of two members of the Unification Church, the only medical witness who testified for Plaintiff was Doctor William Leslie Bergman. Doctor Bergman had some psychiatric training incident to his medical training and served a six month psychiatric internship. For the past five and one-half years he has been a teacher and spiritual counselor in the Unification Church and has served as regional director for the Church in the western United States. He was aware of Plaintiff's emotional instability prior to her alleged "kidnapping". He testified that Plaintiff was severly agitated which he believed was caused by "kidnapping" and 20 hours of "deprogramming". His opinion was that Plaintiff was suffering from an acute anxiety reaction. He testified, however, that he was not making a diagnosis, and was not an expert in psychiatry. His opinion was an impression. Further, he was not familiar with Plaintiff's history of prior treatment for emotional difficulty. The testimony falls far short of proof that Plaintiff suffered emotional disturbance caused by Defendants.

This Court has a clear mandate to protect private individuals from infringement of their civil rights, that is, those rights and guaranties embodied in the Constitution and laws of the United States. Any violation of civil rights legislation which denies an individual equality before the law because of characteristics generally attributable to a group requires decisive remedial action. Before launching upon a review of remedy, however, the Court must find evidence of a violation of Plaintiff's civil rights. On the basis of all the evidence presented, the Court is not

persuaded that Plaintiff's civil rights were infringed by Defendants' actions so as to constitute a violation of 42 U.S.C. § 1958(3) as alleged.

Plaintiff has failed to prove that she suffered deprivation of any federally protected right. At trial, both Defendants invoked their privilege against self-incrimination. It must be taken as true, and the Court so finds, that they combined with Plaintiff's mother for a joint purpose to influence Plaintiff's membership in the Unification Church and to persuade her to leave the Unification Church. The Court holds that Defendants' actions constitute a proper exercise of their constitutional right to speak freely to a willing listener.

Plaintiff's mother has the parental right to freely advocate a point of view to her daughter, be she minor or adult. Defendants have the right which all citizens have, to peaceably dissuade Plaintiff of her particular religious views, provided they use no form of unlawful compulsion to effect their purpose. What occurred here was simply an effort, in private, to persuade a willing listener to disavow the tenets of the Unification Church. To hold otherwise would be to deny Defendants their First Amendment right to freedom of speech, one of the very rights which Plaintiff herself asserts as the basis of her civil rights claim.

As the Supreme Court said in *Cantwell* v. *Connecticut*, 310 U.S. 296, 310 (1940):

> "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the prob-

> ability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

It is clear that Plaintiff has the right to be free of any coercive attempt to speak with her but it is equally clear that without such coercion, her most adequate remedy is simply the refusal to listen. *Grossberg* v. *Deusebio,* 380 F. Supp. 285 (E.D.Va. 1974).

In our civilized society, the free exchange of ideas is essential and thus "the right of every person 'to be left alone' must be placed in the scales with the right of others to communicate." *Rowan* v. *United States Post Office Department,* 397 U.S. 728, 736 (1970).

Absent a situation where one is truly a "captive" listener, the balance of the scale tips in favor of those wishing to communicate. The solution then for a listener whose sensibilities are injured by offensive or insulting speech is simply to close his or her ears or depart. *Erznoznik* v. *City of Jacksonville,* 422 U.S. 205, 211 (1975).

The credible evidence in this action establishes that Plaintiff did not choose to avail herself of the remedy of not listening or departing. Instead, she choose to remain in the Turner home and hear out Defendants. She went so far as to praise them in their efforts to "deprogram" her. Plaintiff's assertions that she was compelled to listen or forced into the pretense of listening cannot be believed. Absent compulsion, freedom of speech and freedom of religion are not to be used as devices to achieve the denial of the same rights to others.

This Court cannot consider Plaintiff's alleged feigned acquiescence as establishing that either Defendant unlawfully deprived Plaintiff of her constitutional rights. By Plaintiff's own testimony, she gave the appearance of acquiescence and acceptance. Plaintiff seeks to excuse her

apparent acceptance of Defendants' efforts by claiming that it was created by intimidation, and, therefore, *ab initio,* illegal. Plaintiff's argument seems to be that in effect she successfully deceived Defendants, and thereby Defendants violated her rights. This is too slender and too dangerous a distinction to form the premise for § 1985 (3) liability, particularly since Plaintiff's present posture may equally be explained by a desire to excuse, after the fact, her apparent acceptance of the effort to "deprogram" her to herself. Equally likely inferences concerning Plaintiff's behavior are not sufficient to carry Plaintiff's burden of proof.

Furthermore, the Court finds no credible evidence of assault and battery or false imprisonment. Her lack of apparent injury and subsequent voluntary commitment for four (4) days at Butler Hospital is evidence that any limitation upon her personal mobility was not her primary concern. Plaintiff has failed to prove a deprivation of any constitutional rights within the meaning of the Statute.

In order to recover damages for a conspiracy to violate her civil rights, Plaintiff must allege and prove a violation of 42 U.S.C. § 1985(3).[3] Based on the facts as found by this Court, Plaintiff fails to prove a cause of action under § 1985(3) as construed by the Supreme Court in *Griffin* v. *Breckenridge,* 403 U.S. 88, 102-103 (1971).

> "To come within the legislation a complaint must allege that the defendants did (1) 'conspire or go in disguise on the highway or on the premises of another' (2) 'for the purpose of depriving, either direct-

[3] The Court need not reach the question whether the facts alleged constitute a proper jurisdictional basis under § 1985(3), since the facts as found make it unnecessary to do so. Apart from Plaintiff's claim of interference with her right to interstate travel, the Court does not decide whether a private conspiracy infringing on First Amendment rights without state action is reachable by § 1985(3).

ly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.' It must then assert that one or more of the conspirators (3) did, or caused to be done, 'any act in furtherance of the object of [the] conspiracy,' whereby another was (4a) *'injured in his person or property' or (4b) 'deprived of having and exercising any right or privilege of a citizen of the United States.'* " (Emphasis added.)

Plaintiff's proof in this case is fatally defective in that she fails to show an essential element of a § 1985(3) claim, that is, the element of injury. In order to recover damages for a conspiracy to deprive one of his or her civil rights, one must be injured in person or property, or there must be an in-fact deprivation of some federally protected civil right. *Bellamy* v. *Mason's Store's Inc.*, 508 F.2d 504 (4th Cir. 1974); *Dells, Inc.* v. *Mundt*, 400 F.Supp. 1293 (S.D. N.Y. 1975); *Grisom* v. *Logan*, 334 F.Supp. 273 (C.D. Cal. 1971). There is no such injury or deprivation proved by Plaintiff.

There is a further compelling reason to deny Plaintiff recovery in this case. The Supreme Court in *Griffin* made it clear that Congress did not intend that § 1985(3) be viewed as an all-embracing federal tort law intended to apply to all tortious conspirational inferences with the rights of others. *Griffin*, 403 U.S. at 102. *Jackson* v. *Cox*, 540 F.2d 209 (5th Cir. 1976); *Abbott* v. *Moore Business Forms, Inc.*, 439 F.Supp. 643 (D.N.H. 1977); *Action* v. *Gannon*, 450 F.2d 1227 (8th Cir. 1971). In order to avoid the "constitutional shoals that would lie in the path of interpreting § 1985(3) as a general federal tort law", the Supreme Court gave a limited construction to the statutory language requiring intent to deprive of equal protection, or equal privileges and immunities. "[Such language] means that there must be some racial, or otherwise class-based invidiously discriminatory animus behind the conspirators' actions." *Griffin*, 403 U.S. at 102. In other words, the conspirators need not have the actual intent to deprive one of his or her civil rights if their acts are motivated by some invidiously discriminatory animus.

Again, Plaintiff's proof fails to show the existence of a critical element, the existence of a class-based animus.[4] While it may be true that Defendants disapprove of the views of the Unification Church, there is not sufficient evidence to suggest that this factor alone translates into the required animus under § 1985(3). In fact, it was shown, and this Court finds, that Defendants' actions were primarily, if not entirely, motivated by te maternal concerns of Plaintiff's mother. Mrs. Weiss' actions, which resulted in her combination with Defendants, arose not from her abhorrence of the Unification Church *per se*, but rather arose directly from the solicitude which a mother holds for her daughter's health and well-being. Defendants, as agents of Mrs. Weiss, derived their motivation from this same maternal solicitude. Whenever an alleged conspirator's actions are directed against one as an *individual*, and not because that individual is a member of a particular class, a cause of action under § 1985(3) is not proved. *Griffin*, 403 U.S. 88, 102; *Kletschka* v. *Driver*, 411 F.2d 436, 447 (2d Cir. 1969); *Brainerd* v. *Potratz*, 421 F.Supp. 836, 840 (N.D. Ill. 1976).

Plaintiff's Complaint is denied and dismissed and judgment shall enter for Defendants for their costs.

/s/

United States District Judge

June 1, 1978.

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[4] The Court need not decide the question whether the religious followers of the Reverend Moon constitute a class for purposes of § 1985(3) protection. See *Baer* v. *Baer*, 450 F.Supp. 481 (N.D. Cal. 1978).

APPENDIX B

United States Court of Appeals
For the First Circuit

No. 78-1293

LESLIE WEISS,
PLAINTIFF, APPELLANT,
v.
THEODORE PATRICK, JR., ETC., ET AL.,
DEFENDANTS, APPELLEES.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

PER CURRIAM. Having thoroughly reviewed the record, we cannot say that appellant has met her burden of showing that the trial court's resolution of conflicting testimony concening the appellant's willingness to remain with and listen to appellees was clearly erroneous. Because appellant was free to leave, we need not reach the constitutional questions raised by appellant's claim under 42 U.S.C. § 1985(3). Similarly, the lack of coercion or threat defeats appellant's false imprisonment and assault claims. Finally, we cannot fault the trial court's conclusion that emotional injury was not proved.

Affirmed.

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1334

LESLIE J. WEISS,
PETITIONER,

v.

THEODORE R. PATRICK, JR., ALIAS JOHN DOE AND ALBERT TURNER, ALIAS RICHARD ROE
RESPONDENTS

RESPONDENTS OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No.

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THEODORE R. PATRICK, JR., ALIAS JOHN DOE AND ALBERT TURNER, ALIAS RICHARD ROE

RESPONDENTS

RESPONDENTS OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Respondents, Theodore R. Patrick, Jr. and Albert Turner, respectfully prays that the petition for Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on November 29, 1978 be denied.

Opinion Below

The Opinion of the Court of Appeals 588 F.2d 818 [a decision without published opinion] (First Circuit, 1978) appears in the Appendix of the Petition. The opinion of the United States District of Rhode Island, 453 F. Supp. 717 (1978) appears in the Appendix of the Petition.

Jurisdiction

Respondents assert a lack of jurisdiction under 28 U.S.C. §1245(1). A Writ of Certiorari is not granted as a matter of right. Supreme Court Rule 19 requires there be "special and important reasons" for the granting of the Writ. The issues in this matter do not reach constitutional dimensions necessary for the grant of such a Writ.

Questions Presented

1. That the District Court's findings of facts are not clearly erroneous and should be left undisturbed.

2. That the court need not reach the claimed constitutional issues on these facts.

Statement of the Case

On June 1, 1978 the District Court of Rhode Island dismissed the complaint and entered judgment for the defendants. 453 F. Supp. 717 (1978).

On November 29, 1978, the First Circuit Court of Appeals affirmed the District Court opinion by a Pes Curiam decision. 588 F.2d 818 (First Circuit, 1978).

The District Court opinion included the following findings of fact:

> The credible evidence is, and the Court finds the facts to be as follows: Plaintiff willingly accompained her mother to the Turner home for Thanksgiving dinner, where she met and talked with Defendant Patrick who had been

> hired and paid by Plaintiff's mother to convince Plaintiff to change her way of life. Plaintiff willingly listended, enjoyed dinner, napped, slept fitfully and, thereafter, determined to exit dramatically. Defendants and Mrs. Weiss indeed intended to change Plaintiff's mind by their actions, but the Court finds no credible evidence of improper action.
>
> There are a number of reasons why Plaintiff's version of the facts which allegedly transpired at Defendant Turner's home is not credible. To begin with, her mother, who was terminally ill, was present as were a number of other persons when the supposed incident occured. Although Plaintiff's mother's deposition was taken when she was known to be terminally ill, and was introduced as evidence, she was not asked to either corroborate or deny Plaintiff's account of what occurred at the Turner home.
>
> In spite of the traumatic and vivid description of the events provided by Plaintiff, she suffered no treatable or apparent physical injury. The facts that she ate well, napped, and moved about at will prior to her "escape" are distinctly contrary to a claim of traumatic infliction of psychic injury.
>
> Plaintiff alleges physical and emotional disturbance as a result of her experience. The Court, finds, however, that there is no credible evidence of such injury.

[PETITION, APPENDIX A, p. 19]

The testimony falls far short of proof that Plaintiff

suffered emotional disturbance caused by Defendants.

On the basis of all the evidence presented, the Court is not persuaded that Plaintiff's civil rights were infringed by Defendant's actions so as to constitute a violation of 42 U.S.C. §1985 (3) as alleged.

[PETITION, APPENDIX A, p. 20]

What occurred here was simply an effort, in private, to persuade a willing listener to disavow the tenets of the Unification Church.

[PETITION, APPENDIX A, p. 21]

The credible evidence in this action establishes that Plaintiff did not choose to avail herself of the remedy of not listening or departing. Instead, she chose to remain in the Turner home and hear out Defendants. She went so far as to praise them in their efforts to "deprogram" her. Plaintiff's assertions that she was compelled to listen or forced into the pretense of listening cannot be believed. Absent compulsion, freedom of speech and freedom of religion are not to be used as devices to achieve the denial of the same rights to others.

This Court cannot consider Plaintiff's alleged feigned acquiescence as establishing that either Defendant unlawfully deprived Plaintiff of her constitutional rights. By Plaintiff's own testimony, she gave the appearance of acquiescence and acceptance. Plaintiff seeks to excuse her apparent acceptance of Defendant's efforts by claiming

that it was created by intimidation, and, therefore, *ab initio,* illegal. Plaintiff's argument seems to be that in effect she successfully deceived Defendants, and therefore by Defendants violated her rights. This is too slender and too dangerous a distinction to form the premise for §1983(3) liability, particulary since Plaintiff's present posture may equally be explained by a desire to excuse, after the fact, her apparent acceptance of the effort to "deprogram" her to herself. Equally likely inferences concerning Plaintiff's behavior are not sufficient to carry Plaintiff's burden of proof.

Furthermore, the Court finds no credible evidence of assault and battery or false imprisonment. Her lack of apparent injury and subsequent voluntary commitment for four (4) days at Butler Hospital is evidence that any limitation upon her personal mobility was not her primary concern. Plaintiff has failed to prove a deprivation of any constitutional rights within the meaning of the Statute.

[PETITION, APPENDIX A., p. 23]

Plaintiff's proof fails to show the existence of a critical element, the existence of a classbased animus [footnote omitted]. While it may be true that Defendants disapprove of the views of the Unification Church, there is not sufficient evidence to suggest that this factor alone translates into the required animus under §1983(3). In fact, it was shown, and this court finds, that Defendants' actions were primarily, if not entirely, motivated by the

> maternal concerns of Plaintiff's mother. Mrs. Weiss' actions, which resulted in her combination with Defendants, arose not from her abhorrence of the Unification Church *per se*, but rather arose directly from the solicitude which a mother holds for her daughter's health and well-being. Defendants, as agents of Mrs. Weiss, deprived their motivation from this same maternal solicitude.

[PETITION, APPENDIX A, p. 25]

It is thus clear from the opinion that the Court below simply did not believe the Plaintiff's claims and assertions, that the Court found no constitutional deprivations of any kind, that Plaintiff had not met her burden of persuasions as to the necessary elements of her causes of action.

Reasons for Denying the Writ

I. That the District Courts Findings of Fact are not Clearly Erroneous and Should be Left Undisturbed.

The findings of fact embodied in the opinion of the trial court negate one or more of the requisite elements of each of the four separate causes of action alleged by Plaintiff.

The applicable standard of review is that set forth in F.R.C.P. 52(a)

On this appeal Plaintiff bears the heavy burden of showing that, in the words of their judge (now Attorney General) Bell, "..we should not hesitate to overturn those findings if we are

left with the definite and firm conviction that a mistake has been committed by the District Court." *Farrell Lines, Inc.*, v. *Jones*, 530 F. 2d 7, at 20 (Fifth Circuit, 1976) citing: *Wade* v. *Mississippi Cooperative Extension Service*, 528 F. 2d 508 (Fifth Circuit, 1976).

However, in the *Wade* case, Judge Bell went on to say that "Any dispute as to the credibility of witnesses ... was for the trial court to decide. [citation omitted]," *Wade*, at p. 518. Cf. *Ayers* v. *Western Line Consolidated School District*, 555 F.2d 1309, (Fifth Circuit, 1977).

Here we are faced with a decision based on the facts adduced by Plaintiff at trial. It is not a case where Plaintiff has been denied her day, rather one in which her claims were given a *full* and *fair* hearing, and a thorough review on the record by the Appellate court. In all respects, both these courts gave full consideration to the issues presented and decided them on the basis of the substantial credible evidence before them.

Petitioner has presented nothing in the way of a clear error, or definite mistake that warrants the reexamination of the findings found and carefully affirmed. Petitioner can not on appeal merely allege that one factual evidentiary inference is more likely than another.

II. That the Court Need Not Reach the Claimed Constitutional Issues on These Facts.

This case is simply not one which requires the court exercise its discrentionary and extraordinary jurisdiction.

Certiorari is not a tool to review evidence and determine specific evidentiary facts.

Clearly, Petitioner is asking this Court to find, what two previous courts, (one after a full trial, the other upon a thorough review of the record) could not find. A third review of these facts is unnecessary and inexpedient.

The facts as found below are entitled to great weight and credibility.

Furthermore, the issues determined were merely those between a dying mother and her concerns over the mental health and well-being of her daughter. Their lack of import and impact to those other than the immediate parties is clear. Thus the issues heretofore determined are of insufficient constitutional significance to warrant this courts attentions.

Conclusion

Wherefore, the petition for Writ of Certiorari to review the judgment and opinion of the First Circuit should be denied.

Respectfully submitted,

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